

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JOSEPH ANTONETTI

Case No. 2:07-cv-000162-MMD-VCF

v

**Plaintiff,**

DWIGHT NEVEN, et al.

(Plaintiff's Objections to Magistrate Judge's Order – dkt. no. 145)

## Defendants.

## I. SUMMARY

Before the Court is Plaintiff's Objections to the Magistrate Judge's Order of February 5, 2013. (Dkt. no. 145.) For the reasons stated below, the objections are overruled.

## II. BACKGROUND

Plaintiff, who is presently in the custody of the State of Nevada and incarcerated in High Desert State Prison (“HDSP”), filed a civil rights complaint against several HDSP employees on January 9, 2008. (Dkt. no. 13.) The Court previously dismissed the entire action in March of 2010 on grounds of failure to exhaust and qualified immunity. (Dkt. no. 70.) However, Plaintiff subsequently appealed and obtained a remand of the following causes of action:

(1) An Eighth Amendment claim pertaining to alleged deprivation of outdoor exercise from December 2004 through November 2005;

- 1                             (2) The use of excessive force on November 15, 2005; and  
 2                             (3) The deprivation of a meal on November 15, 2005.

3                         (Dkt. no. 82.) The Ninth Circuit affirmed the Court's dismissal of Plaintiff's claims  
 4                         alleging deliberate indifference to his serious medical needs, inadequate law library  
 5                         access, and the general use of batons. (*Id.*)

6                         On February 5, 2013, Magistrate Judge Ferenbach issued an Order regarding  
 7                         Plaintiff's motion for appointment of counsel, motion to reconsider, and motion to  
 8                         compel. Magistrate Judge Ferenbach (1) denied Plaintiff's motion for appointment of  
 9                         counsel, (2) denied Plaintiff's motion to reconsider the Magistrate Judge's prior decision  
 10                         denying the motion for counsel, motion for expert, and motion to compel (dkt. no. 132),  
 11                         and (3) granted Plaintiff's motion to compel in part and denied it in part. (Dkt. no. 144.)  
 12                         Plaintiff filed an Objection to the Order (dkt. no. 145), objecting to the Magistrate  
 13                         Judge's decisions regarding the appointment of counsel and the portion of the motion to  
 14                         compel decided in Defendants' favor.

15                         **III. ANALYSIS**

16                         Magistrate judges are authorized to resolve pretrial matters subject to district  
 17                         court review under a "clearly erroneous or contrary to law" standard. 28 U.S.C. §  
 18                         636(b)(1)(A); Fed. R. Civ. P. 72(a). A finding is 'clearly erroneous' when although there  
 19                         is evidence to support it, the reviewing court on the entire evidence is left with the  
 20                         definite and firm conviction that a mistake has been committed." *United States v. United*  
 21                         *States Gypsum Co.*, 333 U.S. 364, 395 (1948); see also *Tafas v. Dudas*, 530 F. Supp.  
 22                         2d 786, 792 (E.D. Va., 2008) (quoting 12 Charles A. Wright, Arthur R. Miller & Richard  
 23                         L. Marcus, *Federal Practice and Procedure* § 3069 (2d ed.1997) ("although an abuse-  
 24                         of-discretion attitude should apply to many discovery and related matters, it need not  
 25                         curtail the power of the district judge to make needed modifications in the magistrate  
 26                         judge's directives.")).

27                         The Magistrate Judge's determination regarding Plaintiff's motion for  
 28                         appointment of counsel was not clearly erroneous. The Order cited to the proper legal

1 standard.<sup>1</sup> The Order correctly determined that it is not clear that Plaintiff will succeed  
2 on the merits of his case, nor had Plaintiff established that his case was so complex that  
3 he, as a *pro se* litigant, could not articulate his claims.

4 The Magistrate Judge's determination regarding Plaintiff's motion to compel was  
5 not clearly erroneous. The Magistrate Judge was correct to deny Plaintiff's motion to  
6 compel documents regarding Defendant Skolnik, who, as the Magistrate Judge noted,  
7 the Ninth Circuit has dismissed from this case. (See dkt. no. 144 at 10-11.)

8 IT IS THEREFORE ORDERED that the Objections to the Magistrate's Order (dkt.  
9 no. 145) are OVERRULED.

10 DATED THIS 30<sup>th</sup> day of April 2013.



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12 MIRANDA M. DU  
13 UNITED STATES DISTRICT JUDGE  
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23       <sup>1</sup>The standard cited was:

24       The court may appoint counsel under 28 U.S.C. § 1915 only under exceptional  
25 circumstances. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). "A finding  
26 of exceptional circumstances requires an evaluation of both the likelihood of  
27 success on the merits and the ability of the petitioner to articulate his claims pro  
se in light of the complexity of the legal issues involved. Neither of these factors  
is dispositive and both must be viewed together before reaching a decision." *Id.*  
(citations and internal quotation marks omitted).

28 (Dkt. no. 144 at 4.)